

# FIVE STAR PRODUCTS, INC.

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18 August 2009

Cynthia A. Carpenter  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Subject: In the Matter of Five Star Products, Inc, Construction Products Research, Inc.,  
and H. Nash Babcock (IA 95-058)

Dear Ms. Carpenter:

On December 1, 1995, the U.S. Nuclear Regulatory Commission (NRC) issued an Order, IA 95-058, against H. Nash Babcock prohibiting him and Five Star Products, Inc. (FSP), Construction Products Research, Inc. (CPR), and any other concern which is owned, controlled, operated or managed by H. Nash Babcock from providing products and services asserted to meet 10 CFR Part 50, Appendix B, or Part 21 requirements until certain provisions specified in the Order are satisfied. (NUREG 0940, Volume 15) (Order). On December 28, 1995, the NRC agreed to a stipulation that relaxed some aspects of the Order.

FSP recognizes the seriousness of these violations and is not disputing the reasons why the NRC issued the Order in 1995. The Order addressed events that occurred more than 17 years ago and has been in effect and has been complied with for more than 13 years. In light of the significant changes that have occurred since the Order was issued, FSP is now requesting that the Order be lifted because the underlying reasons for the Order are no longer present at FSP.

Today, the FSP organization is decentralized; we work as a team to provide creative solutions through open and candid communication. FSP is now ISO 9001 certified, see attached certification. The ISO 9001 certification process has resulted in a quality system that is documented in our quality system manual, policies and instructions. We encourage productive communication, and respect opposing viewpoints and opinions. FSP provides commercial grade products under strict quality control procedures in accordance with our ISO 9001-compliant quality system. We do not accept Orders for products with special requirements for testing, certification or quality assurance beyond our normal ISO 9001 system. FSP is a very different organization from the one that existed in 1995. We believe that FSP should be treated like any other company that is interested in providing commercial grade products.

FSP recognizes and understands that in order to provide products that meet additional quality requirements such as those contained in 10 CFR 50 Appendix B, our current quality system and procedures would need to be enhanced. Like any other company providing safety related products to NRC licensees, FSP would be required to have programs that would comply with the requirements of Parts 21 and 50. The requirements that NRC

licensees are required to meet and the associated regulatory process require that our programs and processes would be required to be audited and a finding made that these programs and processes are in compliance with the applicable NRC regulations before FSP could become a vendor qualified to supply products as meeting the requirements of 10 CFR 50 Appendix B, and Part 21.

The Order may discourage customers from considering purchasing commercial grade products from FSP and related to circumstances that are totally inconsistent with the changes that I have implemented at FSP. Should FSP consider supplying safety-related products and have exploratory discussions with NRC licensees, the existence of the Order will likely place a significant burden for FSP in these discussions as the terms of the Order requires certain actions which are above and beyond those applicable to other vendors such as demonstrations to be made and NRC inspections to occur before FSP may supply Appendix B and Part 21 products. In summary, the Order places FSP at a disadvantage with respect to supplying commercial grade products to customers, as well as placing FSP at a significant disadvantage with respect to exploring the potential for supplying products that satisfy NRC regulations.

In FSP's view, good cause is present to rescind the Order based on the following:

- 1) The Order should be rescinded as the principle reason for issuing the Order, i.e. the concern about the former owner being either unable or unwilling to permit NRC inspections, licensee audits, and to provide complete and accurate information to the NRC is no longer present. The Order, while issued to FSP and CPR, was an individual enforcement action based on the actions of the then owner of both FSP and CPR.<sup>1</sup> He died in 2002 and CPR is no longer in existence.
- 2) Today FSP has a new management team. Neither I, nor any of the current employees of FSP that were employed at the time of the inspection in 1992 were involved in issues that led up to the Order. In addition, the FSP Quality Assurance manager referred to in the Order is no longer with the company.
- 3) The Order did not have a defined period of effectiveness and more than sufficient time has passed since the Order was issued for it to be rescinded. As noted above, the Order that essentially provides a ban from safety-related activities has been in effect for more than 13 years. IA 95-058 did not state or include a defined period of effectiveness. The NRC Enforcement Manual provides that suspensions are not normally more than 5 years. See sections 6.6.4.1.3 and 6.6.9 of the NRC Enforcement Manual. This Order appears unique with its unlimited time period as a review of the information available on the NRC web site did not identify other examples of Orders issued against individuals, which did not have a defined period of effectiveness.<sup>2</sup> The time period since the Order was issued has provided a clear and enduring message to FSP that should it seek to

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<sup>1</sup> This view is consistent with the issuance of the Order as an IA action and not an EA action.

<sup>2</sup> The Manual does indicate that bans may be in place until certain conditions are satisfied. Here the conditions that must be satisfied are essentially to comply with Parts 21 and 50, which must occur in providing safety-related products whether or not there was an Order issued.

supply safety-related products subject to Parts 21 and 50 it will do so only in strict conformance to NRC requirements.

3) FSP makes its facilities, personnel, and product records available for audits by ISO certifiers, customers and prospective customers. Our employees are expected to provide candid and accurate information to auditors. This is a significant change since the time of the Order. Today external and internal audits are routine at FSP.

The ISO certification process, initially received in 1998, has been continuous with the most recent recertification received in 2009. The ISO certification process provides for annual audits performed by independent external auditors certified to perform ISO audits. This continuous and routine external audit process is one of the contributors to the changes in the FSP organization and the way we conduct business.

4) FSP does not sell products or provide services identified or implied as meeting the requirements of 10 CFR 50 Appendix B or Part 21. FSP products and services are sold only as commercial grade.<sup>3</sup> FSP has implemented administrative controls to prevent accepting or processing orders for products and or services which must meet criteria above or beyond ISO 9001, such as 10 CFR 50 Appendix B or Part 21. Our web site and sales information clearly state that our products are produced in an ISO 9001 certified quality system, and we fully understand that the ISO 9001 certification is not sufficient for compliance with 10 CFR 50 Appendix B.

5) FSP is under a new management organization and a new culture. Another significant aspect of the changes which have occurred at FSP during the past 14 years is the conversion from a top down organization to an organization that operates in a team environment that is focused on being a global company that develops, manufactures, markets and sells trusted brands of construction products. The transition that has taken place is a continuing process and building upon ISO 9001 certification. The transition included significant FSP personnel changes, and improvements to programs, processes and procedures needed to achieve ISO 9001 certification. The changes include new management at the top, and in numerous middle management positions within FSP.

6) FSP has issued policies that reflect the new management expectations. The current FSP policy statements for Culture, Vision, Values, and Quality (copies attached) reflect corporate goals of 1) openness, 2) open and candid positive communication, and 3) encouraging productive communication and respect opposing viewpoints and opinions. These goals and values are posted within FSP and reflected in the Quality System Manual as well as in specific FSP instructions and procedures. In periodic meetings, FSP managers and staff reinforce and discuss these goals and values. Importantly, our employees recognize these goals and we believe that our employees subscribe to these values. We have achieved a work environment where our employees: 1) work to meet quality and regulatory requirements; 2) demonstrate effective communications across the company and respect opposing viewpoints and opinions; 3) are open with internal and external auditors; and 4) are expected to raise quality and compliance concerns to

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<sup>3</sup> The FSP procedure for processing commercial grade orders for nuclear facilities states "Five Star Products will supply only commercial-grade products to nuclear power facilities. We will not accept orders with special requirements for testing, certification, or quality assurance beyond our normal ISO 9001-compliant QA system for commercial products."

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management to get issues promptly resolved, but are also free to raise such concerns to FSP regulators without fear of retaliation.

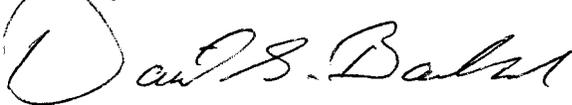
7) I have had an independent review conducted in order to be sure that FSP had addressed the issues that were the basis of the NRC Order. Recently, I requested that Talisman International, LLC, send a Team to FSP to interview a sample of employees, some of whom had been employed in the early 1990's. Based on the employees interviewed and documents reviewed, the Talisman team confirmed the changes discussed above are in place and are being implemented. Mr. John Craig was the leader of the Talisman Team,

In sum, as President of FSP, I have established a totally different management philosophy than the one that was present at the time of the Order. FSP now values open communication within the company and is open to outside auditors and recognizes the need to meet regulatory requirements.

The Order places FSP at a disadvantage with respect to supplying commercial grade products to customers, as well as placing FSP at a significant disadvantage with respect to exploring the potential for supplying products that satisfy NRC regulations. I am confident that the issues raised by the 1998 enforcement action for discrimination would not occur today. The Order is not needed to ensure that FSP will cooperate with full candor in its communications with the NRC, its licensees, or our customers and I request that it be rescinded.

Please call me at 203-336-7990 if you would like us to meet with you or if you have any questions on our request to have the Order terminated.

Sincerely,



David Babcock  
President and Chief Executive Officer  
Five Star Products, Inc.

cc: Samuel Collins  
Regional Administrator  
Region I  
H. James Pickerstein, Pepe & Hazzard LLP  
Attachments: As Stated



Certificate US98/1275

The management system of

# Five Star Products

750 Commerce Drive  
Fairfield, CT 06824  
United States

has been assessed and certified as meeting the requirements of

## ISO 9001:2000

For the following activities

**The design, control of manufacturing, marketing and sale of cement and epoxy based grouts, foundation systems, and concrete repair and coating products and their components for industry.**

Further clarifications regarding the scope of this certificate and the applicability of ISO 9001:2000 requirements may be obtained by consulting the organization

This certificate is valid from 24 June 2009 until 15 November 2010.  
and remains valid subject to satisfactory surveillance audits.  
Recertification audit due a minimum of 30 days before the expiration date.  
Issue 5. Certified since June 2003.

Authorized by

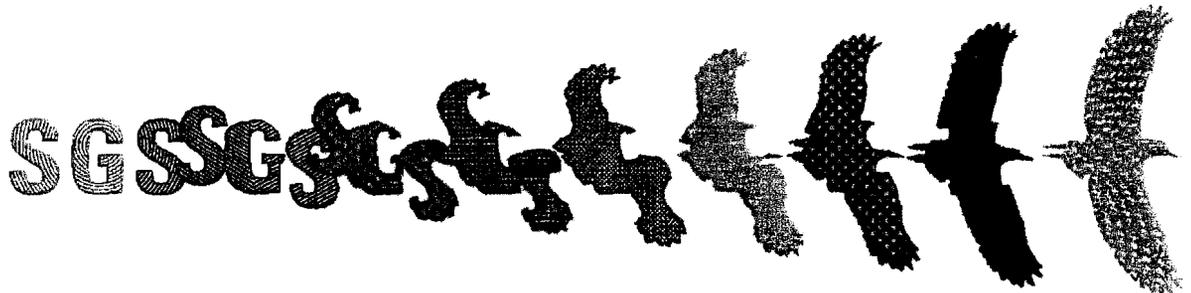
William Thoms  
Director Accreditation, North America

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## *Quality Policy*

Five Star's goals are to continuously improve the quality and value of our products and services, meet the needs of our customers, and remain the innovative leader in our field. We insist that these goals be achieved in a professional and ethical manner.

Five Star is dedicated to excellence, providing customers with unsurpassed technical service, product knowledge, product development, and laboratory services.

Each employee is responsible for the quality of his/her work and for contributing to the success of each department and to the goals of Five Star.

We favor suppliers who have outstanding quality assurance programs and subcontractors who support our commitment to excellence.

## **FIVE STAR PRODUCTS, INC.**

### **Vision: The preferred choice for trusted global construction solutions**

We intend to create value by being a selectively global company that develops, manufactures, markets and sells trusted brands of construction products by providing creative solutions.

### **Mission**

We will capture value for our stakeholders by increasing worldwide market penetration in the industrial & infrastructure markets, expanding into new markets, providing a superior customer experience, introducing new products and striving for operational excellence to deliver creative, valuable and timely solutions to our customers around the world.

The company is committed to achieving our mission by providing an unrivaled customer experience. These services include specification writing, job-site and 800 number support; non-automated customer service, on-time delivery and the ability to develop and manufacture custom products faster than our rivals. Collectively, these services produce a competitive advantage, and also create “pull” for our products, so that we create value for our customers and capture value for our stakeholders.

### **Culture: Creative, market-driven team that is passionate about our customers’ needs**

A customer-focused, market-driven business environment where passionate associates are encouraged to work as a team in a results-oriented environment to provide creative solutions and resolve the company’s issues through open and candid communication.

### **Values**

1. We ensure our products are trustworthy
2. We are responsive to our customers’ needs
3. We embrace change and risk
4. We develop leaders through teamwork and mentoring
5. We encourage productive communication and respect opposing viewpoints and opinions



**BABCOCK & KING, INC.**

**ET AL**

**FIVE STAR PRODUCTS, INC.**

**INTERNATIONAL CONSTRUCTION  
PRODUCTS RESEARCH, INC.**

**EMPLOYEE HANDBOOK**

This **Employee Handbook** has been tailored expressly for your  
companyWelcome to Five Star Products!  
by PAYCHEX, Inc. © Copyright PAYCHEX, Inc. 2009. All rights reserved.

## **Americans with Disabilities Act**

Our company is committed to providing equal employment opportunities to otherwise qualified individuals with disabilities, which may include providing reasonable accommodation where appropriate. In general, it is your responsibility to notify human resources of the need for accommodation. Upon doing so, human resources may ask you for your input or the type of accommodation you believe may be necessary or the functional limitations caused by your disability. Also, when appropriate, we may need your permission to obtain additional information from your physician or other medical or rehabilitation professionals.

## **A Word About our Employee Relations Philosophy**

We are committed to providing the best possible climate for maximum development and goal achievement for all employees. Our practice is to treat each employee as an individual. We seek to develop a spirit of teamwork; individuals working together to attain a common goal.

In order to maintain an atmosphere where these goals can be accomplished, we provide a comfortable and progressive workplace. Most importantly, we have a workplace where communication is open and problems can be discussed and resolved in a mutually respectful atmosphere. We take into account individual circumstances and the individual employee.

We firmly believe that with direct communication, we can continue to resolve any difficulties that may arise and develop a mutually beneficial relationship.

## Talk to Us

We encourage you to bring your questions, suggestions and complaints to our attention. We will carefully consider each of these in our continuing effort to improve operations.

If you feel you have a problem, present the situation to your manager so that the problem can be settled by examination and discussion of the facts. We hope that your manager is able to satisfactorily resolve most matters.

If you still have questions after meeting with your manager or if you would like further clarification on the matter, request a meeting with VP of Finance . (S)he will review the issues and meet with you to discuss possible solutions.

Finally, if you still believe that your problem has not been fairly or fully addressed, request a meeting with the president.

Your suggestions and comments on any subject are important, and we encourage you to take every opportunity to discuss them with us. Your job will not be adversely affected in any way because you choose to use this procedure.

If at any time you do not feel comfortable speaking with your manager or the next level of management, discuss your concern with any other member of management with whom you feel comfortable.